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In the Supreme Court of the United States

October Term, 1982

MICHIGAN CANNERS AND FREEZERS ASSOCIATION, INC.; INDIVIDUAL MEMBERS OF THE MICHIGAN CANNERS AND FREEZERS ASSOCIATION, INC.; DUKESHERER FARMS, INC. and FERRIS PIERSON,
Appellants,

vs.

THE AGRICULTURAL MARKETING AND BARGAINING BOARD and THE MICHIGAN AGRICULTURAL COOPERATIVE MARKETING ASSOCIATION, INC.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

BRIEF IN OPPOSITION TO MOTIONS TO DISMISS

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THE QUESTION PRESENTED IS SUBSTANTIAL

I. THE ISSUE PRESENTED BY THIS APPEAL IS SUBSTANTIAL AND MERITS PLENARY CONSIDERATION BY THE COURT.

Appellees' motions are addressed solely to the substantiality of this case on its merits.[1] Appellees do not claim

1. The Opinion below has now been reported at 416 Mich. 706 (1982). The parties to this appeal have not changed since the filing of the Jurisdictional Statement. The list of parties set forth at pages (i) and A112 through A114 of the Jurisdictional Statement is incorporated herein by reference.

that this appeal falls outside the Court's mandatory appellate jurisdiction. Nor do they contend that the controlling federal question was not properly raised and preserved throughout state court proceedings. To the contrary, appellees join in appellants' statement of the grounds for jurisdiction.

In their attempt to belittle the merits of this appeal, appellees merely highlight the practical importance of the question presented and the substantiality of appellants' position. Appellees' own motions make these points manifest: This case involves the regulation of agriculture, an industry vital to the nation's economy and well-being. It concerns the compulsory "agency shop" unionization of farmers, traditionally the most independent of businesses. (MACMA Motion, p. 5). And it involves a state court decision that a federal act, designed by its drafters to protect a farmer's right to join or not to join a cooperative association, really does not mean what it says.

Although this case arose in the context of asparagus farming in Michigan, far more is at stake. The Michigan Act affects all aspects of Michigan agriculture, and the opinion below will serve as precedent for the upholding of similar legislation passed or pending in other major agricultural states. (See Jurisdictional Statement, p. 26).

This appeal therefore presents a question of practical significance to the nation as a whole. That question was accorded narrow and inadequate treatment by the state court, which severely limited the effect of the Federal Act in order to uphold the conflicting provisions of its own law. The redress of that error requires this Court's plenary consideration.

II. TO AVOID PREEMPTION OF THE MICHIGAN ACT, APPELLEES ARGUE FOR AN UNREASONABLE AND NARROW CONSTRUCTION OF THE FEDERAL ACT.

As the Jurisdictional Statement makes clear, Congress had three distinct goals in passing the Federal Act. Congress sought to foster the formation of agricultural cooperatives. It also sought to preserve a non-consenting farmer's right to remain independent of cooperatives, and processors' rights to deal freely with the customers of their choice. Put another way, Congress sought to strengthen cooperatives, but limited their ability to force either non-consenting farmers or processors to deal with them. The Jurisdictional Statement cited persuasive legislative history establishing Congress' intent to preserve a free market system. *See, e.g.*, S. Rep. No. 474, 90th Cong., 2d Sess., *reprinted in* 1968 U.S. Code Cong. & Ad. News 1867.

Appellees ignore the legislative history cited in the Jurisdictional Statement. Instead, they defend the Michigan Act's abrogation of farmers' and processors' freedom to deal by narrowly defining the rights preserved by the Federal Act. According to MACMA, the Federal Act preserves only a farmer's right not to formally join a cooperative. (Motion, p. 4). So long as a non-consenting farmer's associational right is not infringed, says MACMA, the cooperative may dictate its price, terms of trade, quality standards and other conditions of sale to the farmer.

In order to uphold MACMA's position, this Court must accept the improbable conclusion that Congress was concerned only with a farmer's *associational* right not to become a formal cooperative member, and did not intend to protect the *economic* right to deal free of the cooperative. The legislative history, cited at pages 14 and 15 of the Jurisdictional Statement, belies this conclusion, as

does the entire logic of the Federal Act. Congress was not concerned with the hollow associational right not to be a formal cooperative member, but with the economic right to trade in a free market.

Appellees offer equally cold comfort to processors, who are prohibited by Section 4(1)(h) of the Michigan Act from negotiating with an individual farmer after the accreditation of an association encompassing that farmer. Mich. Comp. Laws § 290.704(1)(h). In response to the charge that the Michigan Act thereby destroys a processor's right, preserved by Section 2304 of the Federal Act, to deal with a farmer regardless of the farmer's membership in an association, appellees respond that the processor may still *deal* with individual Michigan farmers, so long as they abide by the terms dictated by the association. (MACMA Motion, p. 7; Board Motion, p. 6).

Again, in order to avoid the otherwise inescapable conflict between the state and federal acts, this Court is asked to presume a most narrow and improbable Congressional intent. Appellees would have the Court believe that Congress was concerned with social relationships between farmers and processors, and wished to promote personal contacts. Congress was apparently unconcerned with the economic realities of the business transactions between farmers and processors, the terms of which may be dictated by the cooperative. The Federal Act, as appellees view it, protects only the cherished American right to deal face-to-face.

Like the Michigan Supreme Court, appellees are forced to severely narrow the Federal Act in order to uphold the validity of the Michigan Act. Their attempt finds no support in the authorities they cite. The statement of Congressional policy in Section 2301 of the Federal Act, quoted in both motions, clearly evinces Congress' intent to protect the right to "join together *voluntarily*."

(Emphasis added). It does not support the Michigan Act's involuntary appointment of a cooperative as a non-consenting farmer's "exclusive bargaining agent." Mich. Comp. Laws § 290.713.

Similarly, the report of the Secretary of Agriculture, quoted at length on page 9 of the Board's Motion, does not state or imply that the Federal Act sought only to preserve the right to join cooperatives, to the exclusion of the concomitant right to deal free of associations. Finally, *Fairdale Farms v. Yankee Milk, Inc.*, 635 F.2d 1037 (2d Cir. 1980), an antitrust case cited by MACMA, only underscores appellants' point—the antitrust laws, as well as the Federal Act, prohibit coerced membership by cooperatives. 635 F.2d at 1044.

III. THE MICHIGAN ACT DESTROYS RIGHTS PRESERVED BY THE FEDERAL ACT, EVEN AS NARROWLY CONSTRUED BY APPELLEES.

In order to ascribe some meaning to the provision of Section 2303(a) of the Federal Act creating the "right to . . . refrain from joining" an association, appellees argue that the Act was intended "simply to protect farmers from handler coercion." (Board Motion, p. 8). Even this severe narrowing of the Federal Act's intent does not prevent a conflict between the two acts.

Appellees, like the Michigan Supreme Court, ignore the fact that cooperatives, as well as processors, are "handlers" under the Federal Act. (See Jurisdictional Statement, pages 14-15). If the Federal Act is designed "simply to protect farmers from handler coercion", as appellees contend, then it protects farmers from coercion by associations themselves. The relationship between associations and non-consenting farmers is, therefore, not federally "unregulated".

The Michigan Act authorizes more than the formation and preservation of cooperatives. It allows the cooperative, once accredited, to force non-consenting farmers to market their products in accordance with the terms dictated by the cooperative. Unlike the Federal Act, the Michigan Act does not prohibit cooperatives from coercing farmers in the exercise of their right to refrain from joining a cooperative. Mich. Comp. Laws § 290.704(2). The very essence of the Michigan Act is the coercion of non-consenting farmers for the good of the cooperative.

The Michigan Act clearly authorizes cooperatives to transcend the limits established by the Federal Act, even if the Federal law is viewed merely as a prohibition against "handler" coercion. The Michigan Act's destruction of the federally-created freedom from cooperative coercion requires a finding of preemption.

IV. THE CONGRESSIONAL STATEMENT THAT EXISTING STATE LAWS WERE NOT AFFECTED BY THE FEDERAL ACT IS IRRELEVANT TO THIS INQUIRY.

The Jurisdictional Statement pointed out that Congress did not intend to completely occupy the field of agricultural marketing. Section 2305(d) of the Federal Act specifically provides that "existing state law" shall not be changed or modified by the Federal Act. Appellees read this provision as a *carte blanche* sanctioning of state regulation in the area. (Board Motion, p. 4). Section 2305(d) will not bear such a construction.

The Congressional accommodation of existing stat laws is easily understandable in light of the state laws that did exist at the time the Federal Act was considered and passed. In considering the various forms of the Federal Fair Practices Bill, the Senate committee examined three

existing state agricultural bargaining laws. These were the laws of California (effective 1961), Oregon (effective 1963), and Ohio (effective 1965). Cal. Food & Agric. Code § 1223 *et seq.* (repealed); Or. Rev. Stat. § 646.515 *et seq.*; Ohio Rev. Code § 1729.18 *et seq.* The California Act, the "grandfather" of them all, was simple and straightforward. It provided that any farmer had the right to voluntarily join a cooperative bargaining association and prohibited handler interference with that right. Cal. Food & Agric. Code § 1224. The California Act did not make a cooperative association the exclusive representative of all farmers in the bargaining unit, nor did it prohibit a handler from dealing on an individual basis with an individual farmer. The Ohio and Oregon Acts were essentially identical to the California Act.

The evident Congressional purpose for allowing some state regulation in this area was to aid the federal government by providing enforcement and administrative procedures. The California, Ohio and Oregon Acts all provide for criminal penalties, and administrative review of violations of the Acts. These acts do not in any way conflict with the Federal Act, nor are they inconsistent with its objectives and purposes. They do not alter the balance drawn by Congress, but merely provide for general rules concerning the implementation of fair play standards.

The Michigan Act is an altogether different beast. It was passed in 1972, and so was not "existing" at the time the Federal Act was passed. The Michigan Act is markedly different from the state acts existing in 1967 and is is completely inconsistent with the Federal Act itself. It destroys federally protected rights and substitutes mandatory collective bargaining for the free market system carefully preserved by Congress. Section 2305(d) of the Federal Act does not confer any authority upon the states to so overrule federal law.

CONCLUSION

In order to uphold the validity of the Michigan Act, the Michigan Supreme Court narrowly interpreted the provisions and intent of the Federal Act. The court candidly conceded that if its interpretation of the Federal Act is incorrect, the Michigan Act conflicts with federal law and is invalid. (Opinion, p. A8). It should now be clear that the state court was incorrect in its reading of the Federal Act, and that its judgment should be summarily reversed.

Respectfully submitted,

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